

1 DAVID M. WALSH (SB# 120761)  
2 dwalsh@mofo.com  
3 MORRISON & FOERSTER  
4 707 Wilshire Boulevard  
5 Los Angeles, CA 90017-3543  
6 Telephone: (213) 892-5200  
7 Facsimile: (213) 892-5454

5 Attorneys for Defendants  
6 NATIONAL ELECTRONICS WARRANTY  
CORPORATION; NATIONAL ELECTRONICS  
WARRANTY LLC

[ADDITIONAL COUNSEL LISTED ON SIGNATURE PAGE]

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

**SMART AND FRIENDLY  
ENTERPRISES, LLC d/b/a  
AMERICAN REPAIR SPECIALISTS,  
INC.,**

CASE NO. 12-CV-09000 R (FFM)  
**STIPULATED PROTECTIVE  
ORDER**

**Plaintiff.**

Hon. Manuel L. Real

NATIONAL ELECTRONICS  
WARRANTY CORPORATION;  
NATIONAL ELECTRONICS  
WARRANTY LLC, and DOES  
1-100.

## Defendants.

1     1. PURPOSE, LIMITATIONS, AND GOOD CAUSE

2                 Disclosure and discovery activity in this action are likely to involve  
3 production of confidential, proprietary, or private information for which special  
4 protection from public disclosure and from use for any purpose other than  
5 prosecuting this litigation would be warranted. Accordingly, the parties hereby  
6 stipulate to and petition the Court to enter the following Stipulated Protective  
7 Order.

8                 The parties acknowledge that this Order does not confer blanket protections  
9 on all disclosures or responses to discovery and that the protection it affords  
10 extends only to the limited information or items that are entitled under the  
11 applicable legal principles to treatment as “Confidential.” The parties further  
12 acknowledge, as set forth in Section 10 below, that this Stipulated Protective Order  
13 creates no entitlement to file confidential information under seal. Civil Local Rule  
14 79-5 sets forth the procedures that must be followed and reflects the standards that  
15 will be applied when a party seeks permission from the court to file material under  
16 seal.

17                 1.1 Good Cause Statement: No designation of material as “Confidential”  
18 shall be made unless the Designating Party believes in good faith that the material  
19 is entitled to protection under Federal Rule of Civil Procedure 26(c). Good cause  
20 exists to designate as “Confidential” the information and documents described in  
21 Section 2.3 below. Unrestricted or unprotected disclosure of confidential,  
22 proprietary, or private information would likely result in substantial prejudice or  
23 harm to the Designating Party by revealing competitively sensitive and valuable  
24 information, or by revealing private personal information to which a valid privacy  
25 interest pertains. Confidential information may constitute valuable tangible and  
26 intangible assets of a Designating Party, and unrestricted disclosure may destroy or  
27 significantly diminish such value as well as jeopardize the Designating Party’s  
28 competitive standing.

## 2. DEFINITIONS

2.1 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and outside counsel (and their support staff).

**2.2 Disclosure or Discovery Material:** all items or information, regardless of the medium or manner generated, stored, or maintained (including, among other things, testimony, transcripts, or tangible things) that are produced or generated in disclosures or responses to discovery in this matter.

2.3    “Confidential” Information or Items: information (regardless of how generated, stored, or maintained) or tangible things that qualify for protection under standards developed under Rule 26(c). Any Party or non-party from whom discovery is sought in connection with this action may designate as “Confidential” any documents or portions of documents that contain any of the following categories of information:

(a) Personal identification information belonging to any customer of National Electronics Warranty Corporation and National Electronics Warranty LLC (collectively, “Defendants”), including, without limitation, name, address, telephone number, e-mail address, type of equipment purchased, type of repair sought, and payment information;

(b) Any of Defendants' customers' transaction records, which may contain credit card information, personal identification information, or other information in which consumers maintain a reasonable expectation of privacy;

(c) Defendants' proprietary policies and procedures regarding equipment repair and reimbursement; and

(d) Non-public financial data maintained by Defendants, including, but not limited to, financial statements, income statements, or other documents reflecting revenue received by Defendants.

1           2.4    Receiving Party: a Party that receives Disclosure or Discovery  
2 Material from a Producing Party.

3           2.5    Producing Party: a Party or non-party that produces Disclosure or  
4 Discovery Material in this action.

5           2.6    Designating Party: a Party or non-party that designates information or  
6 items that it produces in disclosures or in responses to discovery as “Confidential.”

7           2.7    Protected Material: any Disclosure or Discovery Material that is  
8 designated as “Confidential.”

9           2.8    Outside Counsel: attorneys who are not employees of a Party, but who  
10 are retained to represent a Party in this action.

11          2.9    House Counsel: attorneys who are employees of a Party.

12          2.10   Counsel (without qualifier): Outside Counsel and House Counsel (as  
13 well as their support staff).

14          2.11   Expert: a person with specialized knowledge or experience in a matter  
15 pertinent to the litigation who has been retained by a Party or its Counsel to serve as  
16 an expert witness or as a consultant in this action and who is not a past or a current  
17 employee of a Party or of a competitor of a Party’s and who, at the time of  
18 retention, is not anticipated to become an employee of a Party or a competitor of a  
19 Party. This definition includes a professional jury or trial consultant retained in  
20 connection with this litigation.

21          2.12   Professional Vendors: persons or entities that provide litigation  
22 support services (*e.g.*, photocopying; videotaping; translating; preparing exhibits or  
23 demonstratives; organizing, storing, or retrieving data in any form or medium; etc.)  
24 and their employees and subcontractors.

25          3.      SCOPE

26          The protections conferred by this Stipulated Protective Order cover not only  
27 Protected Material, but also any information copied or extracted therefrom, as well  
28 as all copies, excerpts, summaries, or compilations thereof, plus testimony,

1 conversations, or presentations by a Party or Counsel to or in court or in other  
 2 settings that might reveal Protected Material.

3       4. DURATION

4       Even after the termination of this litigation, the confidentiality obligations  
 5 imposed by this Order shall remain in effect until a Designating Party agrees  
 6 otherwise in writing or a court order otherwise directs.

7       5. DESIGNATING PROTECTED MATERIAL

8       5.1 Exercise of Restraint and Care in Designating Material for Protection.  
 9       Each Party or non-party that designates information or items for protection under  
 10 this Order must take care to limit any such designation to specific material that  
 11 qualifies under the appropriate standards. A Designating Party must take care to  
 12 designate for protection only those parts of material, documents, items, or oral or  
 13 written communications that qualify — so that other portions of the material,  
 14 documents, items, or communications for which protection is not warranted are not  
 15 swept unjustifiably within the ambit of this Order.

16       Mass, indiscriminate, or routinized designations are prohibited. Designations  
 17 that are shown to be clearly unjustified, or that have been made for an improper  
 18 purpose (*e.g.*, to unnecessarily encumber the case development process or to  
 19 impose unnecessary expenses and burdens on other parties), could expose the  
 20 Designating Party to sanctions.

21       If it comes to a Party's or a non-party's attention that information or items  
 22 that it designated for protection do not qualify for protection, that Party or non-  
 23 party must promptly notify all other parties that it is withdrawing the mistaken or  
 24 inadvertent designation.

25       5.2 Manner and Timing of Designations. Except as otherwise provided in  
 26 this Order (*see, e.g.*, Section 5.2(a) below), or as otherwise stipulated or ordered,  
 27 material that qualifies for protection under this Order must be clearly so designated  
 28 at or before the time the material is disclosed or produced.

1 Designation in conformity with this Order requires:

2 (a) for information in document form (apart from transcripts of  
3 depositions or other pretrial or trial proceedings), that the Producing Party affix the  
4 legend “CONFIDENTIAL” at the top of each page that contains protected material.  
5 If only a portion or portions of the material on a page qualifies for protection, the  
6 Producing Party also must clearly identify the protected portion(s) (e.g., by making  
7 appropriate markings in the margins).

8 A Party or non-party that makes original documents or materials  
9 available for inspection need not designate them for protection until after the  
10 inspecting Party has indicated which material it would like copied and produced.  
11 During the inspection and before the designation, all of the material made available  
12 for inspection shall be deemed “Confidential.” After the inspecting Party has  
13 identified the documents it wants copied and produced, the Producing Party must  
14 determine which documents, or portions thereof, qualify for protection under this  
15 Order, and then, before producing the specified documents, the Producing Party  
16 must affix the appropriate legend (i.e., “CONFIDENTIAL”) at the top of each page  
17 that contains Protected Material. If only a portion or portions of the material on a  
18 page qualifies for protection, the Producing Party also must clearly identify the  
19 protected portion(s) (e.g., by making appropriate markings in the margins).

20 A party may designate as “Confidential” documents or discovery  
21 materials produced by a non-party by providing written notice to all parties of the  
22 relevant document numbers or other identification within thirty (30) days after  
23 receiving such documents or discovery materials.

24 (b) for testimony given in deposition or in other pretrial or trial  
25 proceedings, that the Party or non-party offering or sponsoring the testimony  
26 identify on the record, before the close of the deposition, hearing, or other  
27 proceeding, all protected testimony, and further specify any portions of the  
28 testimony that qualify as “Confidential.” When it is impractical to identify

1 separately each portion of testimony that is entitled to protection, and when it  
2 appears that substantial portions of the testimony may qualify for protection, the  
3 Party or non-party that sponsors, offers, or gives the testimony may invoke on the  
4 record (before the deposition or proceeding is concluded) a right to have up to 30  
5 days to identify the specific portions of the testimony as to which protection is  
6 sought. Only those portions of the testimony that are appropriately designated for  
7 protection within the 30 day period shall be covered by the provisions of this  
8 Stipulated Protective Order.

9 Transcript pages containing Protected Material must be separately  
10 bound by the court reporter, who must affix to the top of each such page the legend  
11 “CONFIDENTIAL,” as instructed by the Party or non-party offering or sponsoring  
12 the witness or presenting the testimony. The Designating Party will be responsible  
13 for any additional costs imposed by the court reporting agency to create separately  
14 bound excerpts of deposition transcripts containing Protected Material.

15 (c) for information produced in some form other than documentary,  
16 and for any other tangible items, that the Producing Party affix in a prominent place  
17 on the exterior of the package or container in which the information or item is  
18 stored the legend “CONFIDENTIAL.” If only portions of the information or item  
19 warrant protection, the Producing Party, to the extent practicable, shall identify the  
20 protected portions.

21 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
22 failure to designate Protected Material as “Confidential” does not, standing alone,  
23 waive the Designating Party’s right to secure protection under this Order for such  
24 material. If Protected Material is appropriately designated as “Confidential” after  
25 the material was initially produced, the Receiving Party, on timely notification of  
26 the designation, must make reasonable efforts to assure that the material is treated  
27 in accordance with the provisions of this Order.

28

1       6. CHALLENGING CONFIDENTIALITY

2           6.1 Timing of Challenges. Unless a prompt challenge to a Designating  
3 Party's confidentiality designation is necessary to avoid foreseeable substantial  
4 unfairness, unnecessary economic burdens, or a later significant disruption or delay  
5 of the litigation, a Party does not waive its right to challenge a confidentiality  
6 designation by electing not to bring a challenge promptly after the original  
7 designation is disclosed.

8           6.2 Meet and Confer. A Party that elects to initiate a challenge to a  
9 Designating Party's confidentiality designation must do so in good faith and must  
10 begin the process by conferring directly (in person or telephonically) with counsel  
11 for the Designating Party. In conferring, the challenging Party must explain the  
12 basis for its belief that the confidentiality designation was not proper and must give  
13 the Designating Party an opportunity to review the designated material, to  
14 reconsider the circumstances, and, if no change in designation is offered, to explain  
15 the basis for the chosen designation. A challenging Party may proceed to the next  
16 stage of the challenge process only if it has engaged in this meet and confer process  
17 first.

18           6.3 Judicial Intervention. A Party that elects to press a challenge to a  
19 confidentiality designation after considering the justification offered by the  
20 Designating Party may file and serve a motion under Civil Local Rule 37 (and in  
21 compliance with Civil Local Rule 79-5, if applicable) that identifies the challenged  
22 material and sets forth in detail the basis for the challenge. Each such motion must  
23 be accompanied by a competent declaration that affirms that the movant has  
24 complied with the meet and confer requirements imposed in the preceding  
25 paragraph and by Civil Local Rule 37-1 and that sets forth with specificity the  
26 justification for the confidentiality designation that was given by the Designating  
27 Party in the meet and confer dialogue.

1           The burden of persuasion in any such challenge proceeding shall be on the  
 2 Designating Party. Until the Court rules on the challenge, all parties shall continue  
 3 to treat the material in question as “Confidential.”

4       7. ACCESS TO AND USE OF PROTECTED MATERIAL

5       7.1    Basic Principles. A Receiving Party may use Protected Material that is  
 6 disclosed or produced by another Party or by a non-party in connection with this  
 7 case only for prosecuting, defending, or attempting to settle this litigation. Such  
 8 Protected Material may be disclosed only to the categories of persons and under the  
 9 conditions described in this Order. When the litigation has been terminated, a  
 10 Receiving Party must comply with the provisions of Section 11 below.

11      Protected Material must be stored and maintained by a Receiving Party at a  
 12 location and in a secure manner that ensures that access is limited to the persons  
 13 authorized under this Order.

14       7.2    Disclosure of “Confidential” Information or Items. Unless otherwise  
 15 ordered by the Court or permitted in writing by the Designating Party, a Receiving  
 16 Party may disclose any information or item designated “Confidential” only to:

17           (a)   the Receiving Party’s Outside Counsel of record in this action,  
 18 as well as employees of said Outside Counsel to whom it is reasonably necessary to  
 19 disclose the information for this litigation;

20           (b)   the officers, directors, and employees (including House  
 21 Counsel) and former employees of the Designating or Receiving Party to whom  
 22 disclosure is reasonably necessary for this litigation and who have signed the  
 23 “Acknowledgment and Agreement to Be Bound,” attached hereto as Exhibit A;

24           (c)   experts (as defined in this Order) of the Receiving Party to  
 25 whom disclosure is reasonably necessary for this litigation and who have signed the  
 26 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

27           (d)   the Court and its personnel;

28           (e)   court reporters and their staff;

1                             (f) any mediator (including his or her staff) retained to mediate this  
2 litigation and who has signed the “Acknowledgment and Agreement to Be Bound”  
3 (Exhibit A);

4                             (g) professional vendors to whom disclosure is reasonably  
5 necessary for this litigation and who have signed the “Acknowledgment and  
6 Agreement to Be Bound” (Exhibit A);

7                             (h) during their depositions, and during preparation for deposition  
8 or trial testimony, witnesses in the action to whom disclosure is reasonably  
9 necessary and who have signed the “Acknowledgment and Agreement to Be  
10 Bound” (Exhibit A). Pages of transcribed deposition testimony or exhibits to  
11 depositions that reveal Protected Material must be separately bound by the court  
12 reporter and may not be disclosed to anyone except as permitted under this  
13 Stipulated Protective Order.

14                             (i) the author of the document or the original source of the  
15 information.

16 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED  
17 IN OTHER LITIGATION

18         If a Receiving Party is served with a subpoena or an order issued in other  
19 litigation that would compel disclosure of any information or items designated in  
20 this action as “Confidential,” the Receiving Party must so notify the Designating  
21 Party in writing (by e-mail or fax, if possible) immediately, and in no event more  
22 than three court days after receiving the subpoena or order. Such notification must  
23 include a copy of the subpoena or court order.

24         The Receiving Party also must immediately inform in writing the Party who  
25 caused the subpoena or order to issue in the other litigation that some or all the  
26 material covered by the subpoena or order is the subject of this Protective Order. In  
27 addition, the Receiving Party must deliver a copy of this Stipulated Protective  
28

1 Order promptly to the Party in the other action that caused the subpoena or order to  
2 issue.

3       The purpose of imposing these duties is to alert the interested parties to the  
4 existence of this Protective Order and to afford the Designating Party in this case an  
5 opportunity to try to protect its confidentiality interests in the court from which the  
6 subpoena or order issued. The Designating Party shall bear the burden and the  
7 expense of seeking protection of its confidential material in that court — and  
8 nothing in these provisions should be construed as authorizing or encouraging a  
9 Receiving Party in this action to disobey a lawful directive from another court.

10 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

11       If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
12 Protected Material to any person or in any circumstance not authorized under this  
13 Stipulated Protective Order, the Receiving Party must immediately (a) notify in  
14 writing the Designating Party of the unauthorized disclosure(s), (b) use its best  
15 efforts to retrieve all copies of the Protected Material, (c) inform the person or  
16 persons to whom unauthorized disclosures were made of all the terms of this Order,  
17 and (d) request such person or persons to execute the “Acknowledgment and  
18 Agreement to Be Bound” that is attached hereto as Exhibit A.

19 **10. FILING PROTECTED MATERIAL**

20       Without written permission from the Designating Party or a court order  
21 secured after appropriate notice to all interested persons, a Party may not file in the  
22 public record in this action any Protected Material. A Party that seeks to file under  
23 seal any Protected Material must comply with Civil Local Rule 79-5. If the non-  
24 Designating Party intends to file any Protected Material with the Court, it will  
25 provide sufficient advance notice of the intended filing to the Designating Party so  
26 that the Designating Party can file a motion to file that Protected Material under  
27 seal.

28

1       11. FINAL DISPOSITION

2           Unless otherwise ordered or agreed in writing by the Producing Party, within  
 3 sixty days after the final termination of this action, each Receiving Party must  
 4 return all Protected Material to the Producing Party. As used in this subdivision,  
 5 “all Protected Material” includes all copies, abstracts, compilations, summaries, or  
 6 any other form of reproducing or capturing any of the Protected Material. With  
 7 permission in writing from the Designating Party, the Receiving Party may destroy  
 8 some or all of the Protected Material instead of returning it. Whether the Protected  
 9 Material is returned or destroyed, the Receiving Party must submit a written  
 10 certification to the Producing Party (and, if not the same person or entity, to the  
 11 Designating Party) by the sixty-day deadline that identifies (by category, where  
 12 appropriate) all the Protected Material that was returned or destroyed and that  
 13 affirms that the Receiving Party has not retained any copies, abstracts,  
 14 compilations, summaries, or other forms of reproducing or capturing any of the  
 15 Protected Material. Notwithstanding this provision, Counsel are entitled to retain  
 16 an archival copy of all pleadings, motion papers, transcripts, legal memoranda,  
 17 correspondence, or attorney work product, even if such materials contain Protected  
 18 Material. Any such archival copies that contain or constitute Protected Material  
 19 remain subject to this Protective Order as set forth in Section 4 above.

20       12. PRIVILEGED DOCUMENTS

21           The Parties agree that either Party’s decision to produce certain documents  
 22 protected by the attorney-client privilege, attorney work product doctrine, or any  
 23 other recognized legal privilege will be narrowly construed as a limited waiver of  
 24 the privilege claim as to those documents only. Such limited waiver shall not have  
 25 the effect of waiving the privilege as to any other documents.

26       13. MISCELLANEOUS

27           13.1 Right to Further Relief. Nothing in this Order abridges the right of any  
 28 person to seek its modification by the Court in the future.

1           13.2 Right to Assert Other Objections. By stipulating to the entry of this  
2 Protective Order, no Party waives any right it otherwise would have to object to  
3 disclosing or producing any information or item on any ground not addressed in  
4 this Stipulated Protective Order. Similarly, no Party waives any right to object on  
5 any ground to use in evidence of any of the material covered by this Protective  
6 Order.

7  
8 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

9  
10 DATED: May \_\_\_\_\_, 2013

DAVID M. WALSH  
MORRISON & FOERSTER LLP

11  
12 By: \_\_\_\_\_  
13 DAVID M. WALSH

14 Attorneys for Defendants  
15 NATIONAL ELECTRONICS  
16 WARRANTY CORPORATION;  
17 NATIONAL ELECTRONICS  
18 WARRANTY LLC

DATED: May \_\_\_\_\_, 2013

SUSAN D. SALISBURY

19 By: \_\_\_\_\_  
20 Susan D. Salisbury

21 Attorney for Plaintiff  
22 SMART & FRIENDLY ENTERPRISES,  
23 LLC D/B/A/ AMERICAN REPAIR  
24 SPECIALISTS.

25 PURSUANT TO STIPULATION, IT IS SO ORDERED.  
26

DATED: MAY 7, 2013



\_\_\_\_\_  
United States District Judge

## **EXHIBIT A**

## **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_, of

, declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on \_\_\_\_\_ in the case of *Smart & Friendly Enterprises, LLC v. National Electronics Warranty Corporation, et al.*, No. 12-CV-09000 R (FFM). I agree to comply with and to be bound by all the terms of the Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to the Stipulated Protective Order to any person or entity except in strict compliance with the provisions of the Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of the Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Dated:

## Signature

Printed name: